

In re ) Fair Hearing No. 17,398  
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Appeal of )

The petitioner appeals the decision by the Department of PATH denying her request for a waiver of the requirement that she cooperate with the Department in attempting to collect child support from the absent parent of her child. The issue is whether there is "good cause" for the petitioner's refusal to cooperate within the meaning of the pertinent regulations.

1. The petitioner is a young single mother of a young daughter and receives RUFA benefits for herself and the child. The petitioner states she is looking for work and that she anticipates being able to support herself in the near future.

3. The petitioner's primary fear at this time is that if the Department initiates child support collection the father will attempt to pursue visitation with her daughter. She maintains that this would be very detrimental to her and her

daughter's emotional well being because of the risk of having such a negative influence in their lives. Other than her own fear, however, she offered no actual evidence that the father would be likely or even inclined to pursue visitation if child support proceedings are initiated against him.

4. Based on the petitioner's representations, it cannot be found that the initiation of child support collection against the child's father is likely to cause serious emotional harm to either the petitioner or her daughter. Although contact with the father may not be in the petitioner's or her child's best interest, there is no evidence, or even an allegation, that the initiation of child support collections will lead to anything but the father attempting to pursue visitation rights--and even this must be considered highly speculative, if not dubious, in view of the fact that he has made no serious attempt to have a relationship with his daughter since her birth.

5. Even if it could be found, however, that the initiation of child support collection is likely to lead the father to pursue visitation, whether or not it would be detrimental to the petitioner and her child should the father be successful in that effort is a decision that must be entrusted to the family court. There is no allegation or indication that the petitioner lacks the physical or emotional resources to effectively oppose that effort in an appropriate court proceeding, or that she would not be likely to prevail

if the evidence she submits is sufficient. There is also no evidence or allegation that the father would attempt to avoid legal process and harass or make any other inappropriate or illegal contact with either the petitioner or her child--or that, if he did, the petitioner would not be able to avail herself of legal remedies adequate to prevent this.

6. Based on the petitioner's allegations and proffered evidence it simply cannot be concluded that either the petitioner or her child is reasonably likely to suffer serious emotional harm from the initiation of any attempt to collect child support from the child's father. It must also be found that the petitioner has ample legal recourse and protection available to her to prevent the harm she alleges will result if (in the what-must-be-considered-unlikely event) the father attempts to pursue visitation as a result of the initiation of child support collection against him.

ORDER

The Department's decision is affirmed.

REASONS

Any person who receives RUFA automatically assigns his/her rights to support to the Department and is expected as a condition of eligibility to cooperate in establishing

paternity and collecting child support benefits unless he/she has "good cause" for failing to do so. W.A.M § 2332.

"Good cause" is defined in the Department's regulations, in pertinent part, as follows:

The Department shall excuse a Reach Up financial assistance applicant or participant from cooperating with the establishment of parentage and pursuit of support when there is, in the department's judgement, good cause for noncooperation. Good cause exists when the department determines that cooperation is not in the best interest of the child for whom assistance is requested and is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the participant parent or caretaker so serious that it reduces the ability to care for the child adequately.
3. At least one of the following circumstances exists, and the commissioner or the commissioner's designee agrees that, because of the circumstances in the particular case, requiring a parent or other caretaker to cooperate in proceedings to establish parentage or pursue support would be detrimental to the child for whom support is sought:
  - a. The child for whom support is sought was conceived as a result of incest or forcible rape;
  - b. Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction, or
  - c. The applicant or participant is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the discussions have not gone on for more than three months.

These regulations closely track those found in the federal regulations at 45 C.F.R. § 232.42. As the Board has noted in numerous past cases, a determination of reasonable anticipation of harm is a factual decision which must be made on "a case by case basis on the weight, sufficiency and qualify of the gathered evidence. The final decision requires a subjective judgement on the part of hearing examiner." See Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A. 2d 883, 885 (1982). When the criteria for this exception were set by the Department of Health and Human Services (at that time known as the Department of Health, Education and Welfare), it was expected that it would be an exception used in those few extraordinary circumstances where the parent or child faced a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support. See 43 Fed. Reg. 2176, (January 16, 1978).

In discussing the evidence necessary to support a request for a waiver W.A.M. § 2332.2 includes the following:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the participant parent, or the caretaker, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of paternity or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

In this case, as in many previous cases, although one can easily sympathize with the petitioner's anxiety about attempted contact by the father that may occur as a result of the Department pursuing child support for her child, on the basis of the facts alleged it must be concluded that the "emotional harm" she thinks will occur is not of the likelihood and severity contemplated by the above regulations. Therefore, it must be concluded that the Department's denial of the petitioner's request for a waiver is in accord with the above regulations. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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